IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

SECOND APPEAL NO. 1125 OF 2004

Smt. Laxmi Ram Pawar ... Appellant (Ori.Def.No.1)

V/s

1. Smt. Sitabai Balu Dhotre ... Respondent (Ori.Plaintiff)

2. Executive Engineer, Shivajinagar Sub-Divn., M.S.E.B., Pune. ... Respondent. (Ori.Def.No.2)

Ms. Seema Sarnaik for the appellant.

CORAM: P.V. KAKADE, J.

DATED: 20TH SEPT., 2004.

P.C.:

1. The appellant - defendant No.1 has preferred this appeal against the judgment and order passed by the Addl. District Judge, Pune, in Civil Appeal No. 927 of 2000 allowing the appeal of plaintiff and decreeing the suit by reversing the judgment of the Civil Court in R.C.S. No. 742 of 1998, whereby the suit was dismissed.

2. I have heard the learned counsel for the appellant. Perused the available record.

3. The plaintiff-respondent filed the suit for permanent injunction against the appellant-defendant. The suit property is situated at Wadarwadi, Tal. Haveli, Dist. Pune, of one room admeasuring 8 x 10 ft. having walls iron sheets. The plaintiff filed suit on the basis of ownership title in the property submitting that the defendant appellant was trespasser in the property. The plaintiff was also held not entitled to seek possession of the suit hutment from the defendant and it was further held that the suit was not tenable without the permission of the competent authority as contemplated by Sec. 22 of the Slums Improvement and Development Act and, as such, the suit came to be dismissed.

Being aggrieved by the said order, the plaintiff filed appeal which was heard on merits by the Addl. District Judge who came to the conclusion that the plaintiff had proved her ownership to the suit property and defendant No.1 was permissive user therein. It was further held that the suit was tenable even in absence of permission under Sec.22 (1)(a) of the Maharashtra Slum Areas Act and, as such, the suit came to be decreed against the defendants. Hence the present appeal.

4. On perusal of the judgment and order passed by the lower appellate Court, vis-a-vis that of Civil Court, there is no doubt whatsoever that the learned appellate Court Judge has appreciated the evidence in just and proper manner and, therefore, it would brook no interference. The learned counsel for the appellant sought to raise issue to the effect that the suit was not tenable in law for want of permission under Sec.22 (1) (a) of the Maharashtra Slum Areas Act. However, the controversy appears to be settled by the ruling of this Court in the case of **Shankar v/s Bajirao, reported in 1990 Mh.L.J., 412,** wherein it is held that the trespasser is not occupier within the meaning of Sec. 2(e)(v) of the Maharashtra Slum Areas Act and, therefore, permission contemplated under Sec. 22(1)(a) of the said Act is not necessary for institution of the suit. The factual matrix of this dispute are supported by this ruling and, therefore, the finding recorded by the lower Court to the effect that such permission under Sec. 22 (1) (a) of the said Act is not required, appears to be correct. Time and again it is established that in a case where from a given set of circumstances two inferences are possible, one drawn by the lower appellate Court is binding on the High Court in second

appeal. Adopting any other approach is not permissible. In view of this position, I do not find any merits in the appeal and, therefore, hold that the appeal deserves to be dismissed and stands dismissed in limine. Consequently, the civil application also stands dismissed.

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